



# ***COMMONWEALTH of VIRGINIA***

## ***DEPARTMENT OF ENVIRONMENTAL QUALITY***

VWP Individual Permit Number 08-1066

Effective Date: October 3, 2008

Minor Modification Date: August 1, 2013

Expiration Date: October 3, 2016

### **VIRGINIA WATER PROTECTION PERMIT ISSUED PURSUANT TO THE STATE WATER CONTROL LAW AND SECTION 401 OF THE CLEAN WATER ACT**

Based upon an examination of the information submitted by the owner, and in compliance with § 401 of the Clean Water Act as amended (33 USC 1341) and the State Water Control Law and regulations adopted pursuant thereto, the State Water Control Board (board) has determined that there is a reasonable assurance that the activity authorized by this permit, if conducted in accordance with the conditions set forth herein, will protect instream beneficial uses and will not violate applicable water quality standards. The board finds that the effect of the impact, together with other existing or proposed impacts to surface waters, will not cause or contribute to a significant impairment to state waters or fish and wildlife resources.

**Permittee:** William J. Lemon  
**Address:** P.O. Box 13366, Roanoke, Virginia 24033  
**Activity Location:** 616 Howard Hannah Road, New Castle, Virginia, Craig County

**Activity Description:** The permit authorizes the irrigation of 97 acres of hay land by withdrawing surface water from Craig Creek up to a maximum pumping rate of 465 gallons per minute, a maximum daily withdrawal volume of 669,600 gallons, and a maximum monthly withdrawal volume of 10,540,000 gallons. The permittee is required to report water withdrawals annually in accordance with applicable water withdrawal reporting regulation. No other stream, wetland, or open water impact is authorized. No compensation is required for project impacts.

The permitted activity shall be in accordance with this Permit Cover Page, Part I - Special Conditions, and Part II - General Conditions.

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Robert J. Weld, Deputy Regional Director  
Department of Environmental Quality  
August 1, 2013

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Date

### **Authorized Activities and Permit Term**

#### **A. Authorized Activities**

This permit authorizes the irrigation of 97 acres of hay land at a rate of one inch of irrigation water per acre per week as indicated in the application dated June 3, 2008, received by DEQ on June 9, 2008, and deemed complete on June 9, 2008, by DEQ. The withdrawal of surface water from the Craig Creek shall not exceed a maximum pumping rate of 465 gallons per minute, a maximum daily withdrawal volume of 669,600 gallons, and a maximum monthly withdrawal volume of 10,540,000 gallons.

#### **B. Permit Term**

This permit is valid for 8 years from the date of issuance. A new permit may be necessary for the continuance of the water withdrawal at the end of eight years. The permit term, including any granted extensions, shall not exceed 15 years. The permittee shall notify DEQ in writing at least 120 calendar days prior to the expiration of this permit if an extension of the permit term is required.

#### **C. Standard Project Conditions**

1. The activities authorized by this permit shall be executed in such a manner that any impacts to stream beneficial uses are minimized. As defined in § 62.1-10(b) of the Code, "beneficial use" means both instream and off stream uses. Instream beneficial uses include, but are not limited to, the protection of fish and wildlife habitat, maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic values. Off stream beneficial uses include, but are not limited to, domestic (including public water supply), agricultural, electric power generation, commercial, and industrial uses. Public water supply uses for human consumption shall be considered the highest priority.
2. No activity shall substantially disrupt the movement of aquatic life indigenous to the water body, including those species that normally migrate through the area, unless the primary purpose of the activity is to impound water.
3. Flows downstream of the project area shall be maintained to protect all beneficial uses of state waters.
4. No activity shall cause more than minimal adverse effect on navigation and no activity shall block more than half of the width of the stream at any given time.
5. No impacts to wetlands, streams, or open waters, other than the physical removal of surface water for irrigation as described in the application, are authorized by this permit. Separate authorization from federal, state, and local agencies may be required to address any additional impacts proposed to occur in state waters.
6. Measures shall be employed at all times to prevent and contain spills of fuels, lubricants, or other pollutants into surface waters from pumps and other mechanical equipment associated with the water withdrawal activity.

7. Virginia Water Quality Standards shall not be violated in any surface waters as a result of the project activities.
8. All required notifications and submittals shall be submitted to the DEQ office stated below, to the attention of the VWP permit manager, unless directed in writing by DEQ subsequent to the issuance of this permit:

**Virginia Department of Environmental Quality  
Blue Ridge Regional Office  
3019 Peters Creek Road  
Roanoke, Virginia 24019**

9. All certified reports required by this permit shall be signed by the permittee.
10. All submittals shall contain the following signed certification statement:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

11. Any fish kills or spills of fuels or oils shall be reported to DEQ immediately upon discovery at Blue Ridge Regional Office, 540-562-6700. If DEQ cannot be reached, the spill shall be reported to the Virginia Department of Emergency Management (DEM) at 1-800-468-8892 or the National Response Center (NRC) at 1-800-424-8802.
12. DEQ shall be notified in writing within 24 hours or as soon as possible on the next business day when potential environmentally threatening conditions are encountered which require debris removal or involve potentially toxic substances. Measures to remove the obstruction, material, or toxic substance are prohibited until approved by DEQ.
13. The permittee shall notify the DEQ of any additional impacts to surface waters, including wetlands, including instream work, or of any modifications of the method of withdrawal, the use(s) of withdrawn water, or the location the water is used. Any additional impacts, modifications, or changes shall be subject to individual permit review and/or modification of this permit and compensation may be required.
14. A time of year restriction applies to all instream work from May 15 through July 31 of any year.

15. Prior to conducting work instream, the permittee shall perform a mussel survey 200 meters upstream through 800 meters downstream of any proposed instream work impact area(s). This survey should be performed by a qualified biologist, preferably no more than six months prior to the start of construction. All mussels encountered within the impact areas should be relocated upstream into suitable habitat and any listed threatened or endangered species should be tagged for future monitoring. All relocations should be coordinated with The Department of Game and Inland Fisheries Region II Wildlife Diversity Biologist. No federally listed threatened or endangered species should be relocated without first coordinating with the U.S. Fish and Wildlife Service. Relocation should occur within 30 days of the start of construction to avoid or minimize the chance that mussels will re-colonize the work area. Any survey or relocation activities should adhere to the most current version of the draft guidelines entitled "Freshwater Mussel Guidelines for Virginia."
16. Any in-stream work shall be conducted during low or no-flow conditions using non-erodible cofferdams to isolate the construction area, blocking no more than 50% of the streamflow at any given time, stockpiling excavated material in a manner that prevents reentry into the stream, restoring original streambed and streambank contours, re-vegetating barren areas with native vegetation, and implementing strict erosion and sediment control measures.

#### **D. Projects Involving Surface Water Withdrawals**

1. Water withdrawal rates and volumes shall comply with the limits set forth in Part I.A.
2. The permittee shall monitor withdrawals from Craig Creek on a daily basis to confirm that the withdrawals are in compliance with conditions of this permit.
3. Water withdrawal monitoring and reporting activities shall comply with I.D.4 and Part II. All records and information that result from the monitoring and reporting activities required by this permit, including any records of maintenance activities to the withdrawal system, shall be retained for the life of the permit. Such records shall be made available to the staff of the Department of Environmental Quality upon request. The period of record retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or as requested by the State Water Control Board.
4. For all permittees whose water withdrawal activity is in support of an agricultural operation whose monthly withdrawal rate during any single month exceeds 1,000,000 gallons, the water withdrawals shall be reported to DEQ by **January 31st** of the next year, as required under State Water Control Board (SWCB) Water Withdrawal Reporting Regulation (9 VAC 25-200 et seq.). The annual monitoring report shall contain the following information: the permittee's name and address, the sources and locations of water withdrawal, the cumulative volume of water withdrawn each month of the calendar year, the maximum day withdrawal and the month in which it occurred, and the method of withdrawal measurement.

## **Part II – General Conditions**

### **A. Duty to Comply**

The permittee shall comply with all conditions of the Virginia Water Protection (VWP) permit. Nothing in this chapter shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations and prohibitions. Any VWP permit violation is a violation of the law, and is grounds for enforcement action, VWP permit termination, revocation, modification, or denial of an application for a VWP permit extension or reissuance.

### **B. Duty to Cease or Confine Activity**

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which a VWP permit has been granted in order to maintain compliance with the conditions of the VWP permit.

### **C. Duty to Mitigate**

The permittee shall take all reasonable steps to minimize or prevent any impacts in violation of the permit which may have a reasonable likelihood of adversely affecting human health or the environment.

### **D. Inspection and Entry**

Upon presentation of credentials, the permittee shall allow the State Water Control Board (board) or any duly authorized agent of the board, at reasonable times and under reasonable circumstances, to conduct the actions listed in this section. For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained herein shall make an inspection time unreasonable during an emergency.

1. Enter upon permittee's property, public or private, and have access to, inspect and copy any records that must be kept as part of the VWP permit conditions;
2. Inspect any facilities, operations or practices (including monitoring and control equipment) regulated or required under the VWP permit; and
3. Sample or monitor any substance, parameter or activity for the purpose of ensuring compliance with the conditions of the VWP permit or as otherwise authorized by law.

### **E. Duty to Provide Information**

1. The permittee shall furnish to the board any information which the board may request to determine whether cause exists for modifying, revoking, reissuing or terminating the VWP permit, or to determine compliance with the VWP permit. The permittee shall also furnish to the board, upon request, copies of records required to be kept by the permittee.
2. Plans, maps, conceptual reports and other relevant information shall be submitted as required by the board prior to commencing construction.

#### **F. Monitoring and Records Requirements**

1. Monitoring of parameters, other than pollutants, shall be conducted according to approved analytical methods as specified in the VWP permit. Analysis of pollutants will be conducted according to 40 CFR Part 136 (2000), Guidelines Establishing Test Procedures for the Analysis of Pollutants.
2. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the VWP permit, and records of all data used to complete the application for the VWP permit, for a period of at least three years from the date of the expiration of a granted VWP permit. This period may be extended by request of the board at any time.
4. Records of monitoring information shall include as appropriate:
  - a. The date, exact place and time of sampling or measurements;
  - b. The name of the individuals who performed the sampling or measurements;
  - c. The date and time the analyses were performed;
  - d. The name of the individuals who performed the analyses;
  - e. The analytical techniques or methods supporting the information such as observations, readings, calculations and bench data used;
  - f. The results of such analyses; and
  - g. Chain of custody documentation.

#### **G. Transferability**

A VWP permit shall be transferred only if the VWP permit has been modified to reflect the transfer, has been revoked and reissued to the new permittee, or has been automatically transferred. Any individual VWP permit shall be automatically transferred to a new permittee if:

1. The current permittee notifies the board within 30 days of the proposed transfer of the title to the facility or property;
2. The notice to the board includes a written agreement between the existing and proposed permittee containing a proposed date of transfer of VWP permit responsibility, coverage and liability to the new permittee, or that the existing permittee will retain such responsibility, coverage, or liability, including liability for compliance with the requirements of any enforcement activities related to the permitted activity;

3. The board does not within the 30-day time period notify the existing permittee and the new permittee of its intent to modify or revoke and reissue the VWP permit; and
4. The permit transferor and the permit transferee provide written notice to the board of the actual transfer date.

#### **H. Property Rights**

The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize injury to private property or any invasion of personal rights or any infringement of federal, state or local law or regulation.

#### **I. Reopener**

Each VWP permit shall have a condition allowing the reopening of the VWP permit for the purpose of modifying the conditions of the VWP permit to meet new regulatory standards duly adopted by the board. Cause for reopening VWP permits includes, but is not limited to when the circumstances on which the previous VWP permit was based have materially and substantially changed, or special studies conducted by the board or the permittee show material and substantial change, since the time the VWP permit was issued and thereby constitute cause for VWP permit modification or revocation and reissuance. Such a modification shall be in accordance with 9 VAC 25-210-180, subsections A through H.

#### **J. Compliance with State and Federal Law**

Compliance with this VWP permit constitutes compliance with the VWP permit requirements of the State Water Control Law. Nothing in this VWP permit shall be construed to preclude the institution of any legal action under or relieve the permittee from any responsibilities, liabilities, or other penalties established pursuant to any other state law or regulation or under the authority preserved by § 510 of the Clean Water Act (Act).

#### **K. Severability**

The provisions of this VWP permit are severable.

#### **L. Permit Modification, Revocation and Reissuance, or Termination**

Modification, revocation and reissuance, or termination may be initiated by the board, upon the request of the permittee, or upon the request by another person at the board's discretion under applicable laws or the provisions of 9 VAC 25-210-180, subsections D through H. A VWP permit may be modified, or revoked and reissued with permittee consent, when any of the following developments occur:

1. When additions or alterations have been made to the affected facility or activity that require the application of VWP permit conditions that differ from those of the existing VWP permit or are absent from it;

2. When new information becomes available about the operation or activity covered by the VWP permit that was not available at VWP permit issuance and would have justified the application of different VWP permit conditions at the time of VWP permit issuance;
3. When a change is made in the promulgated standards or regulations on which the VWP permit was based;
4. When it becomes necessary to change final dates in schedules due to circumstances over which the permittee has little or no control such as acts of God, materials shortages, etc. However, in no case may a compliance schedule be modified to extend beyond any applicable statutory deadline of the Act;
5. When changes occur that are subject to "reopener clauses" in the VWP permit; or
6. When the board determines that minimum instream flow levels resulting directly from the permittee's withdrawal of surface water are detrimental to the instream beneficial use, existing at the time of permit issuance, and the withdrawal of surface water should be subject to further net limitations or when an area is declared a surface water management area pursuant to §§[62.1-242](#) through [62.1-253](#) of the Code of Virginia, during the term of the VWP permit.

#### **M. Permit Termination for Cause**

After notice and opportunity for a formal hearing pursuant to Procedural Rule No. 1, 9 VAC 25-230-100, a VWP permit can be terminated for cause. Reasons for termination for cause are as follows:

1. Noncompliance by the permittee with any condition of the VWP permit;
2. The permittee's failure in the application or during the VWP permit issuance process to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;
3. The permittee's violation of a special or judicial order;
4. A determination by the board that the permitted activity endangers human health or the environment and can be regulated to acceptable levels by VWP permit modification or termination;
5. A change in any condition that requires either a temporary or permanent reduction or elimination of any activity controlled by the VWP permit; and
6. A determination that the permitted activity has ceased and that the compensatory mitigation for unavoidable adverse impacts has been successfully completed.

#### **N. Permit Termination by Consent**

A VWP permit can be terminated by consent, as initiated by the permittee, when all permitted activities have been completed or if the authorized impacts will not occur. The permittee shall submit a request for termination by consent within 30 days of project completion or project cancellation. The director may accept this termination on behalf of the board. The permittee shall submit the following information:



1. Name, mailing address and telephone number;
2. Name and location of the activity;
3. The VWP permit authorization number; and
4. One of the following certifications:
  - a. For project completion: "I certify under penalty of law that all activities and any requested compensatory mitigation authorized by a VWP permit have been completed. I understand that by submitting this notice of termination that I am no longer authorized to perform activities in surface waters in accordance with the VWP permit, and that performing activities in surface waters is unlawful where the activity is not authorized by a VWP permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP permit."
  - b. For project cancellation: "I certify under penalty of law that the activities and any required compensatory mitigation authorized by this VWP permit will not occur. I understand that by submitting this notice of termination, that I am no longer authorized to perform activities in surface waters in accordance with the VWP permit, and that performing activities in surface waters is unlawful where the activity is not authorized by a VWP permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP permit, nor does it allow me to resume the permitted activities without reapplication and issuance of another permit."
  - c. For events beyond permittee control, the permittee shall provide a detailed explanation of the events, to be approved by DEQ, and the following certification statement: "I certify under penalty of law that the activities or the required compensatory mitigation authorized by a VWP permit have changed as the result of events beyond my control (see attached). I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP permit, and that performing activities in surface waters is unlawful where the activity is not authorized by a VWP permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP permit, nor does it allow me to resume the permitted activities without reapplication and issuance of another permit."

#### **O. Civil and Criminal Liability**

Nothing in this VWP permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

#### **P. Oil and Hazardous Substance Liability**

Nothing in this VWP permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under § 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

**Q. Unauthorized Discharge of Pollutants**

Except in compliance with a certificate issued by the Board, it shall be unlawful for any person to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;
2. Excavate in a wetland;
3. Otherwise alter the physical, chemical or biological properties of state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses; or
4. On and after October 1, 2001, conduct the following activities in a wetland:
  - a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;
  - b. Filling or dumping;
  - c. Permanent flooding or impounding; or
  - d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

**R. VWP Permit Extension**

Any permittee with an effective VWP permit for an activity that is expected to continue after the expiration date of the VWP permit, without any change in the activity authorized by the VWP permit, shall submit written notification requesting an extension. The permittee must file the request prior to the expiration date of the VWP permit. Under no circumstances will the original and the extended permit terms together exceed a total of 15 years. If the request for extension is denied, the VWP permit will expire on its original date and, therefore, the permittee should allow sufficient time for the board to evaluate the extension request and, in the case of denial of the request, to process a new VWP permit application or an application for a VWP permit modification, if applicable.